

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| Table of Allotments, |) | MB Docket No. 03-232 |
| FM Broadcast Stations. |) | RM-10819 |
| (Chase City, Virginia, and Creedmoor, Ahoskie |) | |
| Gatesville, and Nashville, North Carolina) |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 19, 2004

Released: May 21, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued at the request of Joyner Radio, Inc. ("Petitioner"), licensee of Station WFXQ(FM), Channel 260C3, Chase City, Virginia. Petitioner filed comments stating that it will apply for Channel 260C3 if allotted to Creedmoor. No other comments or counterproposals were received in this proceeding.

2. Petitioner requested the reallocation of Channel 260C3 from Chase City, Virginia to Creedmoor, North Carolina, as its first local service, and the modification of the license of Station WFXQ(FM) accordingly.² To accommodate the reallocation of Channel 260C3 at Creedmoor, Petitioner proposed the substitution of Channel 257A for Channel 259A at Nashville, North Carolina, and the modification of the license of Station WZAX(FM) accordingly. In turn, this substitution requires the reallocation of Channel 257A from Ahoskie to Gatesville, North Carolina, as its first local service, and the modification of the license of FM Station WQDK accordingly.³ As stated in the *Notice*, Petitioner received the consent from the licensees of Station WZAX(FM) and FM Station WQDK.⁴

¹ See *Chase City, Virginia, and Creedmoor, Ahoskie, Gatesville, and Nashville, North Carolina*, 18 FCC Rcd 23735 (MB 2003) ("*Notice*").

² Creedmoor is an incorporated city with a population of 2,232 persons, according to the 2000 U.S. Census. Creedmoor is self-governing with its own mayor, city manager, city commissioners, volunteer fire department, and public schools. There are numerous businesses and organizations located in Creedmoor, including a number of entities incorporating "Creedmoor" into their names.

³ Gatesville is an incorporated town with a population of 281 persons, according to the 2000 U.S. Census and is the county seat of Gates County, which has a population of 10,516 persons. Gatesville has a post office, fire department, and elementary school, as well as numerous businesses, several of which incorporate the name "Gatesville" into their names.

⁴ Petitioner submitted a copy of a consent document signed by Daniel Berman, President of MainQuad Broadcasting, Inc., licensee of Station WZAX(FM), Nashville, North Carolina, and a copy of a consent document signed by David Wilhelm, Managing Member of Ray-D-O-Biz Licenses LLC, licensee of FM Station WQDK, Ahoskie, North Carolina.

3. **Discussion.** Petitioner filed its petition pursuant to § 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.⁵ As required by *Community of License*, the proposed reallocation of Channel 260C3 at Chase City, Virginia is mutually exclusive with the license site of Station WFXQ(FM), Channel 260C3, Creedmoor, North Carolina. Additionally, the proposed reallocation of Channel 257A at Gatesville, North Carolina is mutually exclusive with the license site of FM Station WQDK, Channel 257A, Ahoskie, North Carolina.

4. When considering a reallocation proposal, a comparison is first made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.⁶ In this instance, the proposed reallocation of Channel 260C3 to Creedmoor triggers a priority (3) because it provides a first local service, whereas the existing allotment at Chase City results in a priority (4), other public interest matters, since Chase City would continue to receive local service from AM Station WMEK. Moreover, the proposed reallocation of Channel 257A to Gatesville triggers a priority (3), first local service, whereas the retention of Channel 257A at Ahoskie results in a priority (4), other public interest matters, since Ahoskie would continue to receive local service from noncommercial FM Station WBKU and AM Station WRCS. Based upon the FM Allotment priorities, the reallocation of Channel 260C3 to Creedmoor and the reallocation of Channel 257A to Gatesville would result in a preferential arrangement of allotments because the proposed reallocations would provide Creedmoor and Gatesville with first local services.

5. A staff engineering analysis indicated that the reallocation of Channel 260C3 to Creedmoor would result in a gain of service to 556,759 persons, while resulting in a loss of service to 68,714 persons. In this regard, 811 persons in 74 square kilometers would receive two full-time services, 4,278 persons in 277 square kilometers would receive three full-time services, and 9,327 persons in 674 square kilometers would receive four full-time service. We recognize that the reallocation of Channel 260C3 to Creedmoor results in loss area, but we find that the reallocation to Creedmoor is in the public interest considering the overall population net gain. As stated in the *Notice*, a *Tuck* analysis is not required because Creedmoor is not located within an urbanized area, and since the 70 dBu contour of FM Station WFXQ at Creedmoor only covers 7.6 percent of the Raleigh, North Carolina Urbanized Area.⁷

6. The staff analysis further determined that the reallocation of Channel 257A to Gatesville would result in a gain of service to 25,285 persons, while resulting in a loss of service to 22,167 persons. In this instance, 678 persons in 45 square kilometers would receive four full-time services, while the remaining loss area is served by at least five other existing full-time services. Moreover, a *Tuck* analysis is not required because the reallocation at Gatesville is not located within an urbanized area nor would the signal of FM Station WQDK cover any part of an urbanized area within its 70 dBu contour.

7. We find that the public interest would be served by reallocating Channel 260C3 from Chase City to Creedmoor, and by modifying the license of Station WFXQ(FM) to reflect this change. Channel 260C3 can be allotted to Creedmoor in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 16.3 kilometers (10.1 miles) east of the community.⁸

⁵ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7394 (1990) ("*Community of License*").

⁶ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

⁷ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*"); see also *RKO General*, 5 FCC Rcd 3222 (1990)

⁸ The reference coordinates for Channel 260C3 at Creedmoor, North Carolina are 36-06-56 North Latitude and 78-30-22 West Longitude.

To accommodate the reallocation at Creedmoor, we will substitute Channel 257A for Channel 259A at Nashville, North Carolina and modify the license of Station WZAX(FM) accordingly. Channel 257A can be allotted to Nashville at the current license site of Station WZAX(FM).⁹ In compliance with Commission policy, Petitioner is required to reimburse the licensee of Station WZAX(FM) for reasonable costs associated with changing its frequencies to accommodate the reallocation of Station WFXQ(FM), Channel 260C3 from Chase City to Creedmoor.¹⁰ In order to accommodate the channel substitution at Nashville, we will reallocate Channel 257A from Ahoskie to Gatesville and modify the license of FM Station WQDK accordingly. Channel 257A can be allotted to Gatesville in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 12.9 kilometers (8.0 miles) south of the community.¹¹

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective August 2, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

| <u>Communities</u> | <u>Channel No.</u> |
|----------------------------|--------------------|
| Ahoskie, North Carolina | ----- |
| Creedmoor, North Carolina | 260C3 |
| Gatesville, North Carolina | 257A |
| Nashville, North Carolina | 257A |
| Chase City, Virginia | ----- |

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Joyner Radio, Inc. for Station WFXQ(FM), Channel 260C3, Chase City, Virginia, IS MODIFIED to specify operation on Channel 260C3 at Creedmoor, North Carolina, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station WFXQ(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the

⁹ The license coordinates for Channel 257A at Nashville are 35-57-01 North Latitude and 77-57-26 West Longitude.

¹⁰ See *Circleville, Ohio*, 8 FCC Rcd 159 (1967).

¹¹ The reference coordinates for Channel 257A at Gatesville, North Carolina are 36-17-02 North Latitude and 76-43-40 West Longitude.

Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of MainQuad Braodcasting, Inc. for Station WZAX(FM), Channel 259A, Nashville, North Carolina, IS MODIFIED to specify operation on Channel 257A in lieu of Channel 259A at Nashville, North Carolina , subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station WZAX(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Ray-D-O-Biz Licensees LLC for FM Station WQDK, Channel 257A, Ahoskie, North Carolina, IS MODIFIED to specify operation on Channel 257A at Gatesville, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of FM Station WQDK(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

12. Pursuant to Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Joyner Radio, Inc., licensee of Station WFXQ(FM), Chase City, Virginia, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change in community of license for Station WFXQ(FM), Channel 260C3, Chase City, Virginia, to Creedmoor, North Carolina at the time its Form 301 application is submitted. Additionally, Ray-D-O-Biz Licenses LLC, licensee of FM Station WQDK, Ahoskie, North Carolina, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate

the change in community of license for FM Station WQDK, Channel 257A from Ahoskie to Gatesville, North Carolina at the time its Form 301 application is submitted.

13. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED

14. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau